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2010 NOV - 5 P 3:55

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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TRIA BEAUTY, INC.

Plaintiff,

vs.

RADIENCY INC.,

Defendant

CV 10 - 5030 PVT
Case No.

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES FOR: VIOLATION OF
§ 43(a) OF THE LANHAM ACT;
VIOLATION OF CAL. BUS. & PROF.
CODE § 17500; VIOLATION OF CAL.
BUS. & PROF. CODE § 17200; AND
INFRINGEMENT OF FEDERALLY
REGISTERED TRADEMARKS

JURY TRIAL DEMANDED

1 1. Plaintiff TRIA Beauty, Inc. (“TRIA” or “Plaintiff”), by its attorneys, Ropes & Gray
2 LLP, files this Complaint against defendant Radiancy Inc. (“Radiancy” or “Defendant”) to obtain
3 relief from a massive campaign of false and misleading advertising and other unfair competitive
4 practices by Radiancy that is enticing large numbers of customers to purchase Radiancy’s hair-
5 removal products and is thereby causing TRIA substantial injury in the considerable market for such
6 products. In support of its claims for relief, TRIA avers particularly as follows:

PARTIES

8 2. Plaintiff is a Delaware corporation with its principal place of business in Dublin,
9 California.

10 3. Upon information and belief, Defendant is a Delaware company with its principal
11 place of business in Orangeburg, New York.

JURISDICTION

13 4. This Court has original subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law
15 claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

16 5. This Court has personal jurisdiction over Defendants because Defendants have
17 established minimum contacts with the State of California by purposefully availing themselves of,
18 and doing business in, the State of California through extensive sales in that state and advertising
19 there in various media, including national television networks and the Internet.

VENUE

21 6. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2) because a
22 substantial part of the false and misleading advertising and unfair competition complained of in this
23 complaint has occurred and is occurring in this judicial district, and because TRIA and the public
24 have suffered and continue to suffer injury in this judicial district as a result of the matters
25 complained of herein.

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FACTUAL BACKGROUND

The TRIA System

7. Plaintiff designs, manufactures, markets, and sells the TRIA Laser Hair Removal System (“TRIA System”). The TRIA System consists of a semiconductor diode laser hand-held device that delivers infrared light, combined with a skin sensor that analyzes the user’s skin-type to ensure safe use of the system.

8. The TRIA System uses a method known as selective photothermolysis, whereby the TRIA System’s laser energy is selectively targeted at the dark pigment in hair in order to disable the hair follicle permanently and thereby prevent re-growth of the hair.

9. The Food and Drug Administration (“FDA”) regulates the advertising and distribution of all “devices” that fall within the definition set forth in Section 201(h) of the Federal Food, Drug and Cosmetic Act (“FDC Act”), including any “instrument, apparatus, implement, machine, contrivance” which is “intended to affect the structure or any function of the body of man.” 21 U.S.C. § 321(h). With certain exceptions not relevant here, a medical device may not be introduced into interstate commerce without approval by the FDA of a premarket application or clearance by FDA of a premarket notification under Section 510(k) of the FDC Act. In a Section 510(k) notification, a person proposing to distribute a device in interstate commerce must demonstrate that its device is “substantially equivalent” to a previously legally marketed device, referred to as a “predicate device.” The device may not be legally marketed unless and until FDA issues an order declaring the device that is the subject of the Section 510(k) notification to be substantially equivalent to the predicate identified in the submission. To establish substantial equivalence, the Section 510(k) notification must, among other things, demonstrate to FDA’s satisfaction that any technological differences between the new device and the predicate device do not render the new device less safe or effective than the predicate device. The evidence to make such a showing may include, as FDA deems necessary, human clinical testing or other appropriate scientific data. 21 U.S.C. § 360c(i)(1).

10. In 2005, the FDA granted Section 510(k) clearance for an earlier model of the TRIA System as a prescription device for hair removal, for use under the supervision of a practitioner

1 licensed by state law to direct the use of such device. *See* 21 C.F.R. § 801.109. In 2008, the FDA
 2 granted Section 510(k) clearance for the TRIA System as an over-the-counter (“OTC”) device for
 3 home use, based on extensive clinical testing demonstrating the safety and effectiveness of that
 4 product for use in the OTC environment. In December 2009, after TRIA submitted additional
 5 information demonstrating that use of the TRIA System results in a permanent reduction of hair re-
 6 growth, the FDA granted a further Section 510(k) clearance for the TRIA System as the first OTC
 7 device indicated for permanent hair reduction. To TRIA’s knowledge, the TRIA System remains the
 8 only OTC device to have such FDA clearance.

9 **The “no!no!” Device**

10 11. Defendant Radiancy markets and sells an OTC hair-removal device, in several
 models, under the brand or product name “no!no!” (the “no!no! Device”).

12 13. The no!no! Device consists of a small wire mounted toward the open end of a
 rectangular metal casing. When the user turns on the device, the wire heats up. The user is
 14 supposed to hold the open end of the device against the skin and move the device across the skin
 15 surface. As the user does this, the heated wire melts or chars the surface hairs with which it comes
 16 into contact. The user is then supposed to rub the treated area with an abrasive buffering pad included
 17 in the package with the device, in order to remove the crystallized pieces of charred hair.

18 19. Radiancy distributes the no!no! Device nationally through its own Internet websites at
<https://www.my-no-no.com> and <https://www.trynono.com> and its toll-free telephone number at 1-
 20 800-948-8215. These websites and the toll-free telephone number permit consumers located in any
 21 state, including California, to make direct purchases of the no!no! Device.

22 23. Radiancy also distributes the no! no! Device nationally through third-party on-line
 and “bricks and mortar” resellers, including Sephora, Neiman-Marcus, Home Shopping Network,
 24 and DERMADoctor. These resellers permit consumers located in any state, including California, to
 25 make direct purchases of the no!no! Device.

26 **Radiancy’s False And Misleading Advertising Claims**

27 28. Since introducing the no!no! Device into the U.S. market in approximately 2007,
 Radiancy has engaged in an increasingly heavy campaign of national television and Internet

1 advertising to the general public to promote sales of the product. This advertising consists of the
 2 interstate distribution of information and materials to the general public, including to the public in
 3 California.

4 16. In its labeling and advertising, Radiancy repeatedly claims that use of the no!no!
 5 Device results not simply in a removal of hair (such as results from use of traditional hair-removal
 6 techniques like shaving) but in an alteration of the physiological process by which a user normally
 7 grows hair, resulting in a reduction of hair re-growth and hair density.

8 17. Radiancy claims that this reduction is substantial – indeed, Radiancy quantifies this
 9 claim in large-type banners asserting that use of the no!no! Device results in “Up To 94% Reduction
 10 In Hair Re-Growth,” <https://trynono.com/PS3/index.aspx?mid=807732>, or “Up to 94% less hair
 11 regrowth,” <http://www.my-no-no.com>. In a frequently-broadcast television infomercial
 12 (“Infomercial”), Radiancy makes the same that “with repeated use, hair density can be reduced by up
 13 to 94%.”

14 18. Radiancy further claims throughout its Internet advertising, explicitly or implicitly,
 15 that this near-100% reduction in hair re-growth is long-term or permanent. For example, on one of
 16 Radiancy’s web sites, Radiancy promises that the user of the no!no! Device will obtain “long-term,
 17 professional quality hair removal results,” <https://trynono.com/PS3/advantage.aspx>, and “guaranteed
 18 long-term results, (<https://trynono.com/PS3/index.aspx?mid=807732>. On Radiancy’s other website,
 19 Radiancy promises that the user will “get rid of unwanted hair and keep it gone.” <http://www.my-no->
 20 [no-no.com](http://www.my-no-no.com). And “sponsored links” purchased by Radiancy from various popular Internet search
 21 engines has featured the following “banner” advertising claiming “permanent” results from use of
 22 the no!no! Device:

23
 24 **Permanent Hair Remover** Sponsored links
 25 trynono.com/No_No_Special_Offer **NO NO The Amazing Home Hair Remover TV Offer-**
 Only \$270, 60 Days Trial!

1 Likewise, in television commercials, infomercials, and sponsored segments on Home Shopping
 2 Network and QVC, Radiancy spokespersons repeatedly and forcefully reinforce and elaborate these
 3 claims of permanent hair removal with statements such as the following:

- 4 • “It’s been almost two years that I have not had to think about hair
 removal because of the no!no!”
 <http://www.youtube.com/watch?v=2IB789zasE0&feature=related>.
- 5 • “We’re talking about hair removal, this is no longer a short-term
 solution. We’re talking about a long-term benefit to having no hair
 returning”
 <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=chan>
 nel.
- 6 • “After just a few months of using it, less hair was there, and then I
 was done, for good – it was gone”
 <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=chan>
 nel.
- 7 • “You will have a life of freedom from hair” *Id.*
- 8 • “Certainly commit to it, because it’s going after all those little
 hairs. But I’ll tell you, once you get them, and once they’re gone,
 and they don’t come back, they’re gone for good.” *Id.*

9
 10 19. Radiancy’s labeling and advertising purports to offer a scientific explanation for this
 11 claimed near-100%, permanent reduction in hair re-growth. According to Radiancy’s advertising,
 12 the no!no! Device incorporates a “proprietary technology,” which Radiancy has branded
 13 “Thermicon,” which Radiancy claims uses “thermolysis” or “the thermal principle of heat
 14 transference” to alter the body’s hair growing function. <https://www.my-no-no.com/technology-thermicon.asp>. Specifically, Radiancy claims a “Thermicon effect” whereby the “no!no! conducts
 15 heat down the hair shaft and into the follicle. Like laser and IPL [intense pulsed light] treatments,
 16 the heat gradually disrupts the hair growth cycle.” <https://www.my-no-no.com/nono-about.asp>.
 17 Radiancy asserts that “the signal disrupts the cell communication between the bulge and root,”

1 which communication is “responsible for stimulating hair growth.” [https://www.my-no-](https://www.my-no-no.com/technology-thermicon.asp)
 2 [no.com/technology-thermicon.asp](https://www.my-no-no.com/technology-thermicon.asp).

3 20. Although the no!no! Device does not use or incorporate lasers, Radiancy falsely
 4 advertises the no!no! Device as being “like laser” for hair removal and the “Thermicon” technology
 5 as “laser-like.” For example, in one television commercial, Radiancy’s founder is shown stating that
 6 “Radiancy is the world leader in professional systems used by physicians, in physicians’ offices and
 7 medical spas. After years of research and millions of dollars spent, we managed to miniaturize the
 8 technology and come out with a solution that can be used at home,” thus suggesting that the no!no!
 9 Device is simply a “miniaturized” version of the laser-based hair removal systems used by
 10 dermatological professionals.

11 21. All of Radiancy’s claims regarding the effectiveness of the no!no! Device in
 12 achieving near-100%, permanent reduction of hair re-growth are reinforced by claims stating or
 13 implying that the effectiveness of the Radiancy Device has been clinically tested and proven, such as
 14 the following:

- 15 • “Clinical studies show it inhibits hair regrowth and can reduces
 16 [sic] hair density by up to 94% with no pain, no mess and no
 17 chemicals.” <https://www.my-no-no.com/nono-about.asp>.
- 18 • “What impresses me about **no!no!** is all the research and clinical
 19 studies that have been done to prove that it really does work. A
 20 more recent study shows that **no!no! reduces hair up to 94%**
 21 when used long term.”
<https://trynono.com/PS3/index.aspx?mid=807732>.
- 22 • “Clinical data has shown that with repeated use, hair density can be
 23 reduced by up to 94% and the hair that does grow back comes back
 24 thinner and finer.” Infomercial.
- 25 • “The great thing about the no!no! is that it has been shown
 26 scientifically to actually have an effect similar to what lasers

accomplish in the dermatologist office.”

<http://www.youtube.com/watch?v=BFZ8md9c2u8>

22. Radiancy's website lists three papers under the heading "Clinical Studies." From a review of these papers, it is apparent that none of these studies demonstrates (i) that use of the Device results in a reduction of "hair re-growth"; (ii) that this reduction is substantial and can be as much as 94%; (iii) that the reduction is "long-term" or "permanent"; (iv) that the reduction occurs as a result of heat transference, or the "Thermicon effect," whereby "no!no! conducts heat down the hair shaft and into the follicle" and "the heat gradually disrupts the hair growth cycle"; or (v) that the no!no! Device has "an effect similar to what lasers accomplish in the dermatologist office." Nor does Radiancy cite any other scientific basis for its claims. Tellingly, Radiancy, to TRIA's knowledge, has not submitted any of these studies to FDA or otherwise attempted to obtain clearance from FDA for the no!no! Device as device for reducing hair regrowth, let alone effecting a permanent reduction, and on information and belief, there is no such FDA clearance for the no!no! Device.

23. Moreover, TRIA believes, based on scientific principles and the opinion of leading independent experts, that Radiancy's unsupported effectiveness claims are false and misleading. In particular, TRIA submits that (i) use of the no!no! Device does not result in any "long-term" or "permanent" reduction of hair or a reduction in the rate of hair re-growth, let alone a reduction of as much as 94%; and (ii) the "Thermicon effect," as depicted by Radiancy, does not occur and, in fact, is a physical impossibility.

24. In a solitary and relatively obscure portion of one of its websites, Radiancy itself effectively contradicts its widely advertised claim that use of the no!no! Device produces a substantial, permanent reduction in hair re-growth. On the website <https://trynono.com/PS3/faq.aspx>, Radiancy includes a link to a lengthy list of 44 “Frequently Asked Questions” or “FAQ.” Buried in the middle of these is the question “How long do results last?” and the following answer: “After 3-5 months of no treatments, hair might *return to pretreatment values*. You can easily maintain results with continued use of no!no!” (Emphasis added).

1 25. No such disclosure is included in any of the television commercials or, as noted
 2 above, on the other of Radiancy's two websites. *See* <https://www.my-no-no.com>. Indeed, this
 3 single, obscure disclosure does not begin to counteract the ubiquitous and directly contrary claims
 4 that the user of the no!no! Device will have "no hair in the future,"
 5 <https://trynono.com/PS3/advantage.aspx>; that the user will be able to "get rid of unwanted hair and
 6 keep it gone," <http://www.my-no-no.com>; that the user will be "guaranteed long-term results,"
 7 <https://trynono.com/PS3/index.aspx?mid=807732>; that "It's been almost two years that I have not
 8 had to think about hair removal because of the no!no!,"
 9 <http://www.youtube.com/watch?v=2IB789zasE0&feature=related>; that "After just a few months of
 10 using it, less hair was there, and then I was done, for good – it was gone"
 11 <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>, that "it's going after all those
 12 little hairs. But I'll tell you, once you get them, and once they're gone, and they don't come back,
 13 they're gone for good," <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>; and
 14 that "you will have a life of freedom from hair,"
 15 <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>.

16 26. Radiancy's labeling and advertising also incorporate a number of claims stating or
 17 implying that the no!no! Device is categorically equivalent or superior to laser-based hair removal
 18 systems in effectiveness, including the following:

- 19 • "The great thing about the No!no! is that it has been shown
 20 scientifically to actually have an effect similar to what lasers
 21 accomplish in the dermatologist office."
 22 <http://www.youtube.com/watch?v=BFZ8md9c2u8>.
- 23 • "THE no!no! ADVANTAGE
 24 Now you finally have a solution that lets you achieve long-term,
 25 professional quality hair removal results – in the comfort of your
 26 own home! You no longer need to hassle with the inconvenience
 27 and high cost of expensive, time consuming, and often painful
 28 professional treatments.

1 You can use the no!no! whenever and wherever you want – and
 2 see better results than you would get with professional solutions.
 3 We guarantee it!”

4 <https://trynono.com/PS3/index.aspx?mid=807732>; accord

5 <https://trynono.com/PS3/advantage.aspx>.

6 • “no!no! uses science, not magic, to get these great results. Based
 7 on ThermiconTM technology, no!no! conducts heat down the hair
 8 shaft and into the follicle. Like laser and IPL treatments, the heat
 9 gradually disrupts the hair growth cycle. But unlike lasers and
 10 IPLs, no!no! does not use light at all. This makes it universally
 11 safe and effective for EVERYONE - no matter the skin type or hair
 12 color, including blonde and grey hair!” [https://www.my-no-](https://www.my-no-no.com/nono-about.asp)
 13 [no.com/nono-about.asp](https://www.my-no-no.com/nono-about.asp).

14 27. Radiancy’s advertising also features a chart that explicitly compare the benefits from
 15 using the no!no! Device with those of, among other things, “laser treatment” without specifying any
 16 particular laser-based hair removal system. <https://trynono.com/PS3/advantage.aspx>.

17 28. In an attempt to reinforce its claims of equivalence and superiority to laser-based
 18 systems, and the TRIA systems in particular, and in a deliberate attempt to maximize the unlawful
 19 diversion of customers from TRIA, Radiancy has purchased, and uses, the terms “TRIA,” “TRIA
 20 Beauty,” “TRIA laser” and other phrases incorporating the TRIA name as “keywords” on leading
 21 Internet search engines, including Google, Yahoo!, and Bing, to generate sponsored links to
 22 Radiancy’s websites when Internet users conduct a search using one of these terms. In some of these
 23 sponsored links, Radiancy explicitly refers to TRIA in a manner that states or implies the
 24 equivalence or superiority of the no!no! Device to TRIA laser hair-removal products.

25 29. In addition, Radiancy has purchased sponsored links on Internet search engines that
 26 contain banner ads promoting the no!no! Device as providing “Laser Like Results.” See, e.g.,
 27 <http://www.google.com/#hl=en&expIds=17259,26637,27087,27113,27218,27357,27360,27404&sug>

1 exp=ldymls&xhr=t&q=tria+laser&cp=7&pf=p&sclient=psy&aq=f&aqi=g-14g-
2 o1&aql=&oq=tria+l%3B&gs_rfai=&pbx=1&fp=b2da8a77dcd93603.

3 30. Where no specific laser-based hair removal systems are referenced in Radiancy's
4 comparative advertisements, Radiancy's claims of equivalence and superiority to such products are
5 true and not misleading only if the no!no! Device is, in fact, superior or equivalent to all such
6 products, including not only TRIA's OTC laser-based hair removal systems, but also third-party
7 prescription devices used by medical professionals such as the Candela GentleLASE® and
8 Lumenis® LightSheer laser systems.

9 31. The no!no! Device is not superior or equivalent to TRIA's laser-based hair removal
10 systems, nor is it superior or equivalent to third-party prescription devices used by medical
11 professionals such as the Candela GentleLASE® and Lumenis® LightSheer laser systems.

12 32. Radiancy's advertising includes other bogus claims.

13 33. For example, Radiancy claims repeatedly that the no!no! Device is a "professional
14 treatment," <http://www.youtube.com/watch?v=BFZ8md9c2u8>; that it is the "only at-home
15 professional system for long-term hair removal," Infomercial; and that "no!no! is a breakthrough in
16 hair removal because it delivers the same professional results using professional technology right in
17 the privacy of your home." Infomercial. On information and belief, the no!no! Device is not used
18 by dermatologic professionals, with the possible exception of professionals paid by Radiancy to act
19 as endorsers, nor does the no!no! Device deliver the same results as any professional systems for the
20 reduction of hair regrowth.

21 34. Radiancy also markets the no!no! Device with a cream product called "no!no!
22 Smooth," which it labels and advertises as a "hair growth inhibitor cream" (the "no!no! Cream").
23 Radiancy claims on the product label that the no!no! Cream contains an ingredient called
24 "Capislow," which "helps reduce hair regrowth and density." In its advertising, Radiancy goes
25 further, claiming, for example, that Capislow is "clinically proven to further reduce hair re-growth"
26 (Infomercial) and can "reduce hair by 35%," "reduce hair density by 26%," and "reduce hair
27 regrowth by 11%." <http://www.my-no-no.com/nono-smooth-about.asp>. On information and belief,
28 these claims are false and misleading: Capislow is not clinically proven to reduce hair re-growth or

1 hair density, much less to the specific degrees claimed by Radiancy. Radiancy also describes
 2 Capislow as “patented,” although a search of the United States Patent and Trademark Office
 3 (“USPTO”) patent database reveals no patent for this product. Likewise, Radiancy affixes the
 4 statutory trademark registration symbol “®” to the name Capislow, although the USPTO trademark
 5 database reveals no trademark registration for this name.

6 35. In addition to its many false and misleading claims of effectiveness, both absolute and
 7 comparative, Radiancy also repeatedly claims throughout its Internet and television advertising that
 8 the no!no! Device is “universally safe and effective for everyone” <https://www.my-no-no.com/nono-about.asp>; *accord, e.g.*, <https://www.my-no-no.com/products.asp>; and will entail “no pain”
 9 <https://www.my-no-no.com/nono-about.asp>; *accord, e.g.*, <https://www.my-no-no.com/products.asp>
 10 (devices are “pain-free”); <https://trynono.com/PS3/index.aspx?mid=807732> (video segment)
 11 (“totally pain-free”); and that “no matter where you no!no!, you can no!no! in comfort.”
 12 https://www.my-no-no.com/nono8800_about.asp; *accord, e.g.*,
 13 <https://trynono.com/PS3/advantage.aspx> (“You can use the no!no! whenever and wherever you
 14 want.”).

15 36. An appreciable percentage of consumers would assume from these claims that the
 16 no!no! Device has been determined by FDA to be safe for use anywhere on the body. On
 17 information and belief, FDA has made no such determination; thus, Radiancy’s advertising is
 18 misleading in this regard.

19 37. Moreover, on information and belief, Radiancy’s claims that the no!no! Device is safe
 20 and pain-free and may be used anywhere on the body are false and misleading without regard to the
 21 issue of FDA clearance. In a single location on one of its websites, Radiancy provides the following
 22 warning concerning one of the models of the no!no! Device, namely, the so-called “Classic”:
 23 “WARNING! Never use no!no! on the face, breasts or genitals.” <https://www.my-no-no.com/nono-how-to-use.asp>. And the user’s manual admits that “Those with sensitive skin may experience a
 24 burning sensation or find that their skin becomes uncomfortably hot during treatment.” no!no!
 25 User’s Manual at p. 6. With regard to another model, the “8800,” Radiancy similarly cautions, “Do
 26 not use no!no! on the breasts or genitals.” https://www.my-no-no.com/nono8800_about.asp. These

1 statements evidence the falsity of Radiancy's claims that the no!no! devices are "universally safe,"
2 "totally pain-free," and may be used "whenever and wherever you want."

3 **FIRST CLAIM FOR RELIEF**

4 **FEDERAL UNFAIR COMPETITION**

5 [Lanham Act § 43(a), 15 U.S.C. § 1125(a)]

6 38. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

7 39. The above-described advertising claims made by Defendant either deceived or had
8 the capacity to deceive a substantial segment of potential consumers for aesthetic hair removal
9 products.

10 40. Defendant's deception was and is material, in that it was and is likely to influence a
11 consumer's purchasing decisions.

12 41. Defendant has caused their false statements to enter interstate commerce.

13 42. Defendant's advertising claims, as alleged above, violate 15 U.S.C. Section 1125(a)
14 and have caused and/or are likely to cause damage to TRIA and the public in an amount to be
15 determined at trial, and, unless restrained, will further damage TRIA and the public.

16 43. In making and disseminating the above-described materially false and misleading
17 advertising claims, Defendant knew, or by exercise of reasonable care should have known, that the
18 claims were untrue and/or misleading and likely to deceive the public. Accordingly, the actions of
19 Defendant were willful, and this is an exceptional case justifying an award of reasonable attorneys'
20 fees.

21 **SECOND CLAIM FOR RELIEF**

22 **CALIFORNIA FALSE ADVERTISING**

23 [Cal. Bus. & Prof. Code § 17500]

24 44. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

25 45. Defendant's advertising, as alleged above, contains statements that are untrue or
26 misleading. Defendant knows or should have known by exercise of reasonable care that the
27 statements were untrue or misleading.

46. Defendant's advertising violates Section 17500 of the California Business and Professions Code. Plaintiff TRIA has suffered injury in fact and has lost money or property as a result of such unfair competition, causing damage to TRIA in an amount to be determined at trial, and, unless restrained, will further damage TRIA.

THIRD CLAIM FOR RELIEF

CALIFORNIA UNFAIR COMPETITION

[Cal. Bus. & Prof. Code § 17200 *et seq.*]

47. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

9 48. Defendant's advertising, as alleged above, constitutes unlawful, unfair and/or

10 fraudulent conduct in violation of Section 17200 of the California Business and Professions Code.

11 TRIA has suffered injury in fact and has lost money or property as a result of such unfair

12 competition, causing damage to TRIA in an amount to be determined at trial, and, unless restrained,
13 will further damage TRIA.

FOURTH CLAIM FOR RELIEF

INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARKS

[Lanham Act § 32, 15 U.S.C. § 1114]

49. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

18 50. The terms TRIA and TRIA BEAUTY are valuable trademarks of Tria in active use in
19 commerce and registered in the United States, among other jurisdictions, in connection with, among
20 other things, electrical devices for personal use for removing hair, eliminating acne, facial
21 rejuvenation and toning, and skin care; and acne treatment and skin care preparations (United States
22 Trademark Registration Nos. 3360633, 3756135, 3807647, 3822558, and 3828866).

23 51. Radiancy has used these registered TRIA trademarks in commerce in connection with
24 the sale, offering for sale, distribution, or advertising of goods in connection with which such use is
25 likely to cause confusion, to cause mistake, or to deceive and thereby constitute infringement of
26 these registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.
27 Radiancy's infringement of TRIA's registered trademarks has caused and/or is likely to cause

1 damage to TRIA and the public in an amount to be determined at trial, and, unless restrained, will
2 further damage TRIA and the public.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Plaintiff seeks judgment as follows:

5 On the First Claim for Relief

6 1. For preliminary and permanent injunctions:

7 a. Enjoining and restraining Defendant and its agents, servants and employees
8 from publishing or publicly disseminating any statement, either directly or indirectly, concerning the
9 nature, characteristics and qualities of the no!no! Device and/or the no!no! Cream in any way so as
10 to constitute unfair competition or deceptive, untrue, or misleading advertising;

11 b. Ordering Defendant to issue statements retracting its false and/or misleading
12 and deceptive statements concerning the no!no! Device and the no!no! Cream by distributing such
13 retractions, in a form approved by TRIA, to all recipients of Defendant's advertising containing said
14 false and/or misleading and deceptive statements and by posting such retractions on its websites at
15 <https://www.my-no-no.com> and <https://www.trynono.com> for at least six (6) months;

16 c. Ordering that all of Defendant's physical brochures, advertisements, press
17 releases and promotional materials that contain unlawful statements concerning the no!no! Device
18 and/or the no!no! Cream be recalled and destroyed;

19 2. That Defendant file with this Court and serve upon TRIA within fifteen (15) days
20 after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and
21 form in which Defendant has complied with the injunction.

22 3. That the Court award TRIA:

23 a. All damages sustained by reason of the wrongful acts complained of herein in
24 an amount to be proven at trial;

25 b. Treble the amount of the actual damages suffered by TRIA pursuant to 15
26 U.S.C. § 1117;

27 c. Costs of this action;

28

d. Reasonable attorneys' fees, in that this is an exceptional case, within the meaning of 15 U.S.C. § 1117(a); and

e. Such other and further relief as the Court shall deem just.

On the Second and Third Claims for Relief

4. For preliminary and permanent injunctions:

a. Enjoining and restraining Defendant and its agents, servants and employees from publishing or publicly disseminating any statement, either directly or indirectly, concerning the nature, characteristics and qualities of the no!no! Device and/or the no!no! Cream in any way so as to constitute unfair competition or deceptive, untrue, or misleading advertising;

b. Ordering Defendant to issue statements retracting its false and/or misleading and deceptive statements concerning the no!no! Device and/or the no!no! Cream by distributing such retractions, in a form approved by TRIA, to all recipients of Defendant's advertising containing said false and/or misleading and deceptive statements and by posting such retractions on its websites at <https://www.my-no-no.com> and <https://www.trynono.com> for at least six (6) months;

c. Pursuant to California Business and Professions Code § 17203, ordering that Defendant immediately cease and desist from making reference, either directly or indirectly, to the no!no! Device and/or the no!no! Cream in any way so as to constitute unfair competition or deceptive, untrue, or misleading advertising;

5. That Defendant file with this Court and serve upon TRIA within fifteen (15) days after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction.

6. That the Court award TRIA:

a. Costs of this action;

b. Such other and further relief as the Court shall deem just.

On the Fourth Claim for Relief

7. Preliminarily and permanently enjoining and restraining Defendant and its agents, servants and employees from using any registered or unregistered TRIA trademark in commerce in connection with the sale, offering for sale, distribution, or advertising of goods in connection with

which such use is likely to cause confusion, to cause mistake, or to deceive, including without limitation use as an Internet search keyword, metatag, or domain name;

8. That Defendant file with this Court and serve upon TRIA within fifteen (15) days after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction.

9. That the Court award TRIA:

a. All damages sustained by reason of the wrongful acts complained of herein in an amount to be proven at trial;

b. Treble the amount of the actual damages suffered by TRIA pursuant to 15 U.S.C. § 1117;

c. Costs of this action;

d. Reasonable attorneys' fees, in that this is an exceptional case, within the meaning of 15 U.S.C. § 1117(a); and

e. Such other and further relief as the Court shall deem just.

JURY DEMAND

Plaintiff TRIA demands a jury trial for all claims as provided for in Federal Rule of Civil Procedure 38.

DATED: November 5, 2010

Respectfully submitted,

By:

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Attorneys for Plaintiff
TRIA BEAUTY, INC.